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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,720	12/28/2001	Earl J. Braxton	NMC104A US	2117

21133 7590 09/22/2003

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EXAMINER

PHILLIPS, CHARLES E

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 09/22/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,720

Applicant(s)

BRAXTON, EARL J.

Examiner

Charles E. Phillips

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-10, 12-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) 4, 9, 14 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 8, 10, 12, 13, 15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3,5,7,8,10,12,13,15 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. All base claims now include the phrase "final folded flat state". The specification offers no support for "final" and page 9, line 14, indicates that the "flat state" is not a state where walls are superimposed. Therefore the specification fails the enablement test under this section.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5,7,8,10,12,13,15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl taken with Tegg et al.

Dahl teaches a toilet shelter employing four walls which can be folded to a state best shown in Fig. 2 where adjacent walls lie superimposed. Lacking in Dahl is a base which is circumscribed by the side walls. Tegg et al teach a knock down toilet where

base 11 is employed and shown to be circumscribed by the sides of the unit. As both teach toilet enclosures it would have been obvious to the ordinary artisan to provide Dahl with a base and roof cooperating with the sides as taught by Legg et al as the use of perfecting features of one device in the environment of another like device would have been prima facie obvious in order to glean the properties of said features.

Alternatively it would have been obvious to provide for the use of the wall connection scheme of Dahl to replace the scheme of Tegg et al as the two would have constituted obvious alternative disassembly schemes both shown used in identical art devices. The claim 5 "commode" is taught by Tegg et al at 53.

As to the "final" state, whatever this may mean is taught by Dahl in Fig. 2. Whether this is final is merely an intended use.

Claims 3,8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Braxton '836.

The latter teaches the use of rivets in col. 3, line 22, the use of which in Dahl would have constituted an obvious expedient known to the artisan.

Regarding applicant's assertion bridging pages 10-11 of the response that motivation is lacking; the fact that identical art devices were shown as set forth in the

last paragraph of page 2, of paper # 6 meets the motivation for the ordinary artisan.
The request to make any subsequent action non-final is denied.

The fact that the art teaches identical environments is the primary motivating factor here and does meet the 103 provisions as applied to the ordinary artisan.

Claims 4, 9,14 and 18-20 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

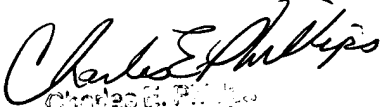
Any inquiry concerning this communication should be directed to Charles Phillips at telephone number 703-308-1515.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Charles E. Phillips
Primary Examiner